

CITY OF HOUSTON



**BID SPECIFICATIONS
FOR
SALE OF SURPLUS LAND**

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CITY OF HOUSTON

BID SPECIFICATIONS

FOR

SALE OF SURPLUS LAND

SECTION 1 - CONTENTS AND PURPOSE

These bid specifications set forth certain instructions, terms, and conditions that apply to the sale of surplus City land conducted pursuant to Section 2-236 of the Code of Ordinances. A copy of Section 2-236 is reproduced in full and is attached hereto as *Exhibit A*. Such sales are also governed generally by Federal and State statutes, the City of Houston Charter, and other sections of the Code of Ordinances where specific circumstances so require. Although the instructions, terms, and conditions contained herein do not constitute an ordinance, resolution, or motion binding upon the City, a bidder submitting a bid on a sale conducted pursuant to Section 2-236 will certify by signing the bid form that the bidder has read the provisions contained herein and that the bidder agrees that the provisions will be strictly enforced in all respects.

SECTION 2 - INSTRUCTIONS TO BIDDERS

2.01 Preparation of Bid Forms:

- A. General. Separate bids must be submitted for each parcel of land offered by the City for sale. A bid must be submitted on the form provided by the Department of Public Works and Engineering. Such bid form must be personally signed by the bidder, submitted in duplicate, and accompanied by a signed Affidavit of Non-Interest. If the bidder is a corporation or other business firm, the bid form must be signed by a person authorized to bind the corporation or business firm, submitted in duplicate, and accompanied by a signed Affidavit of Non-Interest. Both copies of the bid form must be submitted together in an envelope sealed and clearly marked as follows: **“BID FOR PURCHASE OF CITY OF HOUSTON REAL ESTATE - PARCEL NO. (City Parcel Number).”**
- B. Amount of Bid. Under all circumstances, in the spaces provided on the bid form for entering the bid amount, the bid must be expressed in dollars and cents. This provision applies whether the bid is based solely on cash or on cash and the conveyance of land pursuant to subparagraph (b) of Section 2-236 of the Code of Ordinances.
- C. Land Offered by Bidder. When the City specifically solicits a bid based on a consideration all or part of which is the conveyance to the City of land pursuant to subparagraph (b) of Section 2-236 of the Code of Ordinances, the following additional instructions shall apply:

- (I) Enter the following statement on the bid form in the space immediately above the bidder's signature line: "THIS BID IS SUBMITTED IN ACCORDANCE WITH SUBPARAGRAPH (b) OF SECTION 2-236 OF THE CODE OF ORDINANCES, AND I HEREBY AGREE TO CONVEY TO THE CITY OF HOUSTON GOOD, CLEAR, AND MERCHANTABLE TITLE TO THAT TRACT OF LAND DESCRIBED IN EXHIBIT 1, ATTACHED HERETO AND MADE A PART HEREOF, WHICH TRACT IS VALUED AT \$(Amount)."
- (ii) Behind each copy of the bid form, attach a copy of the City of Houston field notes describing the parcel of land to be conveyed to the City, and label this page: "EXHIBIT 1 TO BID PROPOSAL ON CITY PARCEL NO. (City Parcel Number)."
- (iii) Should the expressed value of the tract offered by the bidder exceed the dollar amount of the bid and should such bid be accepted by City Council, the City will at the time of closing pay to the selected bidder the difference between the amount of the bid and the expressed value of the tract offered by the bidder to the City.
- (iv) Request that the Department of Public Works and Engineering provide any special instructions, terms, or conditions that might apply to a bid pursuant to subparagraph (b) of Section 2-236 of the Code of Ordinances on this particular sale.

2.02 Bid Deposit. *Each bid must be accompanied by a deposit of at least ten percent (10%) of the total dollar amount of the bid.* The bid deposit must be in the form of a cashier's check, certified check, or money order payable to the City of Houston, or a bond with a corporate surety authorized to do business in the State of Texas. A sample of a bidder's bond is attached hereto as *Exhibit B*. Any other bond form will be subject to rejection if, in the opinion of the City Attorney, it fails to secure the City in the performance of the specified terms and conditions of the sale. The opinion of the City Attorney shall be final.

When a bid is submitted in accordance with subparagraph (b) of Section 2-236 of the Code of Ordinances, should the deposit exceed the cash portion, if any, of the amount bid, any cash overpayment will be refunded to the selected bidder at the closing.

2.03 Receipt and Opening of Bids. Sealed bids are to be delivered to the office of the City Secretary, in the City Hall Annex, in accordance with the instructions contained in the City's SEALED BID SALE NOTICE. These bids will be opened and publicly read in the City Hall Annex, Public Level, Room P112 at the time stated in the SEALED BID SALE NOTICE or as soon thereafter as may be practical, at the discretion of City Council.

2.04 Determination and Notification of the Selected Bidder. At a City Council meeting held after the date on which bids were received, City Council will consider a tabulation of the bids and a recommendation from the Department of Public Works and Engineering as to the highest qualifying bid. The formal award to a selected bidder will be made by an ordinance authorizing the Mayor to execute and the City Secretary to attest a deed conveying to the selected bidder the land offered by the City for sale.

Closing Arrangement:

- A. Conveyance by the City. When the deed has been executed and is ready for delivery, the selected bidder will be notified where to accept delivery of the deed and a certified copy of the ordinance. Upon delivery of these instruments, the selected bidder will be required to make payment in full.
- B. Payment of Consideration by the Selected Bidder:
 - (I) If the selected bid was based solely on cash consideration, the selected bidder will be required at the time of closing to pay the difference between the full amount of the bid and the amount of the bid deposit. If a bidder's bond was furnished as the bid deposit, the full amount of the bid will be due and payable at the time of closing. Payment of any cash consideration must be made in the form of a cashier's check, certified check, or money order payable to the City of Houston.
 - (ii) If the selected bid was based wholly or partially on the consideration of the conveyance to the City of land pursuant to subparagraph (b) of Section 2-236 of the Code of Ordinances, the selected bidder will be required at the time of closing to execute a deed, approved as to form by the City Attorney, conveying to the City the land offered as consideration. If the selected bid was based on cash in addition to the conveyance of land, payment of such amount must be made at the time of closing.

Affidavit of Non-Interest. City of Houston Charter, Article VII, § 4, and Code of Ordinances, Section 15-1, make void any contract in which a member of City Council, officer of the City of Houston, or employee of the City of Houston has a direct or indirect pecuniary interest. An Affidavit of Non-Interest, attached hereto as *Exhibit C*, must be submitted as part of the bid documents.

SECTION 3 - TERMS AND CONDITIONS OF SALE OF SURPLUS CITY LAND

Rejection of Bids. City Council reserves the right to reject any or all bids at any time prior to the passage of the ordinance authorizing the Mayor to execute and the City Secretary to attest a deed conveying to the selected bidder the land offered by the City for sale. A bid will be automatically rejected when:

- A. It is not accompanied by at least the prescribed amount of the bid deposit as specified in Section 2.02;
- B. It is not submitted in duplicate;
- C. Both copies of the bid form are not signed as specified in Section 2.01 (A);
- D. It is not submitted on the City's bid form;
- E. It is submitted after the time and date specified in the City's SEALED BID SALE NOTICE;
- F. It is not accompanied by an Affidavit of Non-Interest.

- 3.02 Non-Payment of Brokerage Fees. The City will not pay a brokerage or real estate agent's fee on the sale of City land.
- 3.03 Bidder's Withdrawal Rights. Under no circumstances will a bidder be entitled to withdraw the bid once the City Secretary has received the bid deposit.
- 3.04 City's Rights Upon Failure of Selected Bidder to Close the Transaction. When the deed conveying the parcel offered for sale by the City has been executed by the Mayor and is ready for delivery, the selected bidder will be notified by mail where to call to accept delivery of the deed. If for any reason the selected bidder should fail to render full payment of the consideration upon which the bid was based within thirty (30) days after the mailing of the aforesaid notice, such failure shall be construed as a refusal to pay the consideration due the City under the terms of the bid and as a refusal to accept the City's deed. Should the selected bidder for any reason fail or refuse to close the transaction within the thirty (30) day period, the City shall have the right, at its option, to retain the bidder's deposit or, if a bidder's bond was furnished as the deposit, to be paid the amount of the bond by the bonding company, the amount of the deposit or bond being agreed upon as liquidated damages because of the inconvenience of ascertaining the actual damages and the uncertainty thereof. In addition to the foregoing, it is understood and agreed that the City shall have the right, at its option, to pursue any and all other remedies available to it at law or in equity, including, but not limited to, the right to demand specific performance on the part of the selected bidder. If the City is successful in enforcing the right to specific performance, it is understood and agreed that upon the City's demand, the selected bidder shall pay to the City reasonable attorney's fees incident thereto.
- 3.05 Conveyance by the City. Subject to its right to reject bids under Section 3.01, the City shall tender an executed deed conveying the land offered by it for sale within one-hundred-twenty (120) days after the date of passage of the ordinance determining a selected bidder. Failure on the part of the City to tender such deed within the one-hundred-twenty (120) day period shall entitle the selected bidder to refuse to close the transaction by giving written notice to the Director of the Department of Public Works and Engineering. Upon receipt of written notice of refusal, the City will refund the selected bidder's deposit. Neither the City nor the selected bidder shall be liable to any party in any respect as a result of such refusal to close the transaction under this circumstance.
- 3.06 Bidder's Duty to Inquire As to Quality of Title. Each bidder shall be solely responsible to inquire as to the quality of the title of each parcel offered for sale by the City.
- 3.07 Rights of Person in Possession. If the land offered by the City for sale, whether improved or unimproved, is, or appears to be, in the possession of any person whomsoever, each bidder, before submitting a bid on the parcel, shall satisfy himself as to the rights, if any, of the person in possession. A selected bidder shall not be entitled to refuse to close the transaction because of the rights of any person in possession on the date the bid was submitted.
- 3.08 Ad Valorem Taxes. Should there be any tax payments due, it is specifically understood and agreed that the selected bidder will be purchasing the parcel subject to such tax liabilities and will be responsible for payment thereof. By acceptance of a deed from the City of Houston, the selected bidder is put on notice that the land conveyed to him will thereafter be subject to assessment for all taxes.

3.09 Conveyance Instruments. The deed conveying land offered by the City for sale will be based on the description of the land prepared by the Department of Public Works and Engineering, or on such other legal description as may be approved by the City Attorney. The deed shall be executed and acknowledged on behalf of the City by the Mayor (or in the Mayor's absence, the Mayor Pro Tem) and attested by the City Secretary under the City Seal. The name of the grantee in the deed shall be the same as the name on the bid form of the person, corporation, or other business firm submitting the bid. The deed shall be in the form commonly referred to as a "*Special Warranty Deed*" under which the City will warrant title "... by, through, or under itself, but not otherwise . . .," and the conveyance shall be subject to all easements, public utilities, restrictions, covenants, conditions of record, and any other special restrictions specified in the bid proposal.

3.10 Environmental.

A. Environmental Testing

- (i) By City. City shall make available to Bidder a copy of City's environmental assessment report(s), if any (referred to as "City's Environmental Reports") for the Land. City makes no warranty or representation as to the accuracy of completeness of said report(s).
- (ii) By Bidder. Upon notice that the land is offered by the City for sale (the "Notice Date"), Bidder shall notify City if Bidder intends to enter the Land to inspect, survey or conduct such environmental testing as Bidder may desire, at Bidder's sole cost and expense, whether for potential contamination in the surface or subsurface of the Land or otherwise (hereinafter referred to as "Testing"). Bidder may enter the Land to conduct Testing upon consent by City for this Land and subject to the following conditions: a) any contractor, consultant or agent used by Bidder for the Testing shall be, in the sole discretion of City, acceptable to City; however, the Testing shall be at Bidder's sole cost; b) City shall have the right to observe the Testing and to take split samples; c) Bidder shall indemnify, defend and hold City harmless from any and all damages (including damage to the Land), losses, claims, liabilities, penalties, costs and expenses (including attorney's fees) resulting from acts or omissions associated with the Testing, and this covenant shall survive the Closing or earlier termination of the bidding process; d) Bidder agrees to obtain the insurance specified in Section 3.11; and e) the Testing and subsequent generation of a survey, quality-assured laboratory data, and other written report(s), if any, (hereinafter referred to as "Testing Results") shall be completed within 30 days of the Notice Date, or the close of the bid period, whichever is earlier. Upon completion of the Testing of the Land and the subsequent generation of Testing Results, Bidder shall immediately provide the Testing Results to the City.

- B. Testing Insurance. If Bidder conducts Testing as outlined in Section 3.10 above, Bidder shall maintain, at Bidder's sole cost, or shall require any contractor, consultant or agent Bidder may engage to maintain at all times as required herein, the insurance coverage set forth below with providers satisfactory to City with full policy limits applying, but not less than as set forth below. A certificate naming City as an additional insured and referencing the indemnification provisions set forth in these Bid Specifications shall be delivered to City prior to commencement of the Testing. Such certificate shall provide that any change restricting or reducing coverage or the cancellation of any policies under which certificates are issued shall not be valid as respects City's interest herein until City has received timely prior written notice of such change or cancellation.

Worker's Compensation Insurance as required by laws and regulations applicable to and covering employees of Bidder, its contractors, consultants or agents engaged in the performance of the Testing.

Employer's Liability Insurance protecting Bidder against common law liability, in the absence of statutory liability, for employee bodily injury arising out of the master-servant relationship with a limit of not less than Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) each occurrence.

Comprehensive General Liability Insurance including products / completed operations with limits of liability of not less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit. This policy shall cover, among other risks, the contractual liability assumed under the indemnity provision set forth herein.

Business Automobile Liability Insurance covering all vehicles used in the operations of Bidder with limits of liability of not less than Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.000) combined single limit.

- C. Environmental Reports. Executive summaries of City's Environmental Reports and the Bidder's Testing Results (if any) shall be listed as an exhibit to the ordinance authorizing the Mayor to execute the deed conveying the land.

3.11 Inspection. Bidder represents that Bidder (or its agents or consultants) will have inspected, by the close of the bid period, the Land, together with any buildings included in the sale, will be familiar with its condition, inclusive of substances in the soil or groundwater that may or may not be present, and accepts same AS IS, AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS ON THE PART OF City as to what that condition may be. Bidder further represents that Bidder has determined that any buildings exist and are present on the land.

3.12 Restrictions:

- A. General. It will be the sole responsibility of the bidder to become familiar with whatever restrictions are enforceable on the land being offered by the City for sale whether of record or not. The City makes no representations, guarantees, or warranties as to what may be built on the property or as to what use may be made of it, with the exception of the billboard restrictions that follow.

- B. Billboard Restrictions. Any conveyance of land offered by the City for sale will be subject to a restriction against the erection of billboards. The restriction shall be embodied in the conveyance deed by the City in clauses substantially similar to the following:

“This conveyance is also made and accepted subject to Grantee's agreement, which agreement is a restriction upon and covenant running with the land, that neither Grantee nor its successors or assigns shall ever erect, place, use, or maintain any billboard or similar structure on the above-described premises for the display thereupon of any advertising; provided that this covenant shall not prevent the placing upon any building that may be erected thereupon, or upon the premises, of appropriate signs advertising the business therein conducted, the products therein sold, or otherwise reasonably incident to the occupancy and use of such building and the premises.

It is further understood and agreed, and such agreement shall also be a restriction upon and a covenant running with the land, that any violation of the foregoing covenant shall give the Grantor herein, its successors, or assigns the right to enter upon the Property and summarily remove any such billboard, sign board, or similar advertising device or structure at the expense of the owner, and such entry and removal shall not be deemed a trespass or conversion, and the Grantor, its successors, or assigns shall further have the right to enforce the performance of the covenant by the appropriate legal action, and no act or omission upon the part of any of them shall be a waiver of the operation or enforcement of such covenant or condition.”

EXHIBIT A

Sec. 2-236 Sale of city land generally.

(a) Any land owned by the city, other than land provided for in Sections 2-237, 2-238, and 2-239, determined not be needed for city purposes, shall be advertised and may be sold to the highest bidder upon authorization of the city council, based on the appraised fair market value of such land. The selling price for such land shall never be for less than the market value fixed by city council, which determination as to such market value will be final.

(b) When such land is advertised for sale upon authorization of the city council, any bidder may bid on the basis of all or part of the consideration for such land being the conveyance to the city of good, clear and merchantable title to land which the city council, prior to the advertisement for bids, has determined is needed by the city for public purposes.

EXHIBIT B
BIDDER'S BOND

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS §

That we, _____, as Principal, and the other subscriber hereto as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston, a municipal corporation of Harris, Fort Bend, and Montgomery Counties, Texas, in the sum of _____ Dollars (\$_____).

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the said Principal is submitting to the City of Houston a bid for the purchase of a parcel of City-owned property identified in the bid proposal as Parcel No. _____, in accordance with the terms and the conditions of the Bid Specifications and Bid Proposal, to which instrument reference is here made for all purposes;

NOW, THEREFORE, if the bid of the said Principal for the purchase of the above-identified parcel of land is accepted by the City of Houston and said Principal concludes the purchase of said parcel of land in strict accordance with the terms and provisions of said Bid Specifications and Bid Proposal, then this bond shall become null and void; but in the event said Principal is unable or fails to conclude the purchase of the said parcel of land in accordance with the terms and provisions of said Bid Specifications and Bid Proposal, the undersigned Principal and Surety shall be liable to the City of Houston for the full amount of this obligation, which is here and now agreed upon and admitted to be the amount of liquidated damages that will be suffered by the City of Houston on account of the failure of such Principal to comply with the bid terms. By stipulating the amount of this bond to be liquidated damages, the City of Houston does not thereby waive any other remedy available to it at law or in equity inasmuch as the terms and conditions of the City of Houston's instructions to bidders permit its securing from said Principal remedies other than monetary damages and thus unrelated to the bond herein created.

It is expressly agreed that if the bid of the Principal for the above-identified parcel of land is not accepted by the City of Houston, then the undersigned bidder or surety will be entitled, receipting therefore, to have this bond surrendered up and delivered back to said Principal and Surety.

This bond and all obligations created hereunder shall be performable in Harris County, Texas.

EXECUTED THIS _____ day of _____, A.D. 20____.

ATTEST:

(Principal)

(Secretary)

By:

ATTEST:

(This is a suggested form of Bidder's Bond. Any other bond form will be subject to rejection if it fails to secure the City of Houston in the performance of the terms and conditions provided in the Bid Specifications and Bid Proposal)

EXHIBIT C

THE STATE OF TEXAS §

COUNTY OF HARRIS §

AFFIDAVIT OF NON-INTEREST

BEFORE me, the undersigned authority, a Notary Public in and for the State and County aforesaid, on
this day personally appeared _____,
(Name)

who being by me duly sworn on oath stated to be: _____ of
(Position in business, if applicable)

(Name of business, if applicable)

the Bidder named and referred to in the Bid Proposal; and that said Bidder knows of no officer, agent, or employee of the City of Houston being in any way or manner interested either directly or indirectly in such Bid Proposal.

(Signature)

SWORN TO AND SUBSCRIBED before me this _____ day of _____

_____, A.D. 20____.

[SEAL]

Notary Public in and for Harris County, Texas